

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**June 4, 2002**

**IN RE:**

**GENERIC DOCKET TO CONSIDER  
GEOGRAPHIC DEAYERAGING**

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**DOCKET NO.  
01-00339**

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**ORDER ON PETITIONS TO INTERVENE**

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This docket came before the Pre-Hearing Officer for consideration of the following petitions for intervention: 1) *Petition of Time Warner Telecom of the Mid-South, L.P. for Leave to Intervene* filed on July 7, 2001; 2) *Petition to Intervene* filed by Brooks Fiber Communications of Tennessee, Inc. on August 6, 2001; 3) *Petition to Intervene* filed by MCImetro Access Transmission Services, LLC on August 6, 2001; 4) *Petition of BellSouth Telecommunications, Inc. for Leave to Intervene* filed on May 22, 2002; 5) *Sprint Communications Company, L.P. and United Telephone-Southeast, Inc. Joint Petition to Intervene* filed on May 24, 2002; and 6) *Petition to Intervene* filed by MCI WorldCom Communications, Inc. on May 31, 2002.

The Authority opened this docket in accordance with the *Final Order* entered on February 23, 2001 in Docket No. 97-01262 to address geographic deayeraging and technology advances.<sup>1</sup> At the May 1, 2001 Authority Conference, the Directors voted unanimously to appoint General Counsel or his designee to act as the Pre-Hearing Officer for the purposes of

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<sup>1</sup> See *In re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262, *Final Order*, pp. 10-11 (Feb. 23, 2001).

determining the scope of the docket, establishing a procedural schedule to completion, and disposing of all preliminary matters.

In a *Report and Recommendation* entered on March 13, 2002, the Pre-Hearing Officer recognized the difficulty of resolving issues related to both geographic deaveraging and technology advances in one docket. Therefore, the Pre-Hearing Officer recommended that the Authority create a separate docket to address the issues related to technology advances. In addition, the Pre-Hearing Officer recommended

that the Directors order Time Warner Telecom of the Mid-South, L.P., Brooks Fiber Communications of Tennessee, Inc., and MCImetro Access Transmission Services, LLC, all of which have filed petitions to intervene, to notify the Executive Secretary within five (5) days of the deliberations regarding into which dockets the parties wish to intervene. If the parties choose to seek intervention in both dockets, then the petitions should remain in Docket No. 01-00339 and the parties afforded an opportunity to file petitions in the technology advances docket at a later date.<sup>2</sup>

The Authority considered the *Report and Recommendation* at a regularly scheduled Authority Conference on April 16, 2002. The Authority accepted the *Report and Recommendation* stating:

Those parties having filed petitions to intervene in Docket No. 01-00339<sup>3</sup> shall notify the Executive Secretary within five (5) days of the deliberations regarding the dockets in which they wish to intervene. If the parties choose to seek intervention in both dockets, then the petitions shall remain in Docket No. 01-00339 and the parties shall be afforded an opportunity to file petitions in Docket No. 02-00434<sup>4</sup> at a later date.<sup>5</sup>

Time Warner Telecom of the Mid-South, L.P. did not file the required notification and has not subsequently entered an appearance in this docket. Brooks Fiber Communications of Tennessee, Inc. and MCImetro Access Transmission Services, LLC also failed to file the required notification. These entities, however, filed comments on May 24, 2002 and entered an

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<sup>2</sup> *Report and Recommendation*, p. 3 (Mar. 13, 2002).

<sup>3</sup> At the time of the deliberations, the parties that had filed petitions to intervene were Time Warner Telecom of the Mid-South, L.P.; Brooks Fiber Communications of Tennessee, Inc.; and MCImetro Access Transmission Services, LLC.

<sup>4</sup> Technology advances issues were assigned to Docket No. 02-00434.

<sup>5</sup> *Order Accepting Report and Recommendation*, p. 3 (May 13, 2002) (footnotes 3 and 4 added).

appearance at the May 31, 2002 status conference. In addition, during the conference, counsel for Brooks Fiber Communications of Tennessee, Inc. and MCImetro Access Transmission Services, LLC indicated that the parties wished to intervene in this docket. Based on these facts, the Pre-Hearing Officer finds that the petition to intervene filed by Time Warner Telecom of the Mid-South, L.P. should be dismissed without prejudice. The petitions to intervene filed by Brooks Fiber Communications of Tennessee, Inc. and MCImetro Access Transmission Services, LLC shall be considered along with the petitions of BellSouth Telecommunications, Inc.; Sprint Communications Company, L.P.; United Telephone-Southeast, Inc.; and MCI WorldCom Communications, Inc.

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.<sup>6</sup>

The petitions for intervention filed by Brooks Fiber Communications of Tennessee, Inc.; MCImetro Access Transmission Services, LLC; BellSouth Telecommunications, Inc.; Sprint Communications Company, L.P.; United Telephone-Southeast, Inc.; and MCI WorldCom Communications, Inc. are timely and substantiate that the legal interests of the entities may be determined in this docket. Moreover, there is no indication that granting the petitions for

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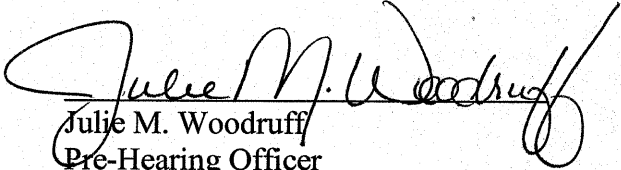
<sup>6</sup> Tenn. Code Ann. § 4-5-310(a) (1998).

intervention will in anyway impair the interests of justice or the orderly and prompt conduct of this docket. Lastly, no objections as to any of the petitions for intervention have been entered. Therefore, pursuant to Tenn. Code Ann. § 4-5-310(a), the petitions should be granted.


**IT IS THEREFORE ORDERED THAT:**

1. Brooks Fiber Communications of Tennessee, Inc.; MCImetro Access Transmission Services, LLC; BellSouth Telecommunications, Inc.; Sprint Communications Company, L.P.; United Telephone-Southeast, Inc.; and MCI WorldCom Communications, Inc. are hereby granted leave to intervene. As intervenors, these parties may participate in this proceeding as their interests require and receive copies of any notices, orders or other documents filed herein.

2. The *Petition of Time Warner Telecom of the Mid-South, L.P. for Leave to Intervene* filed on July 7, 2001 is dismissed without prejudice.

  
Julie M. Woodruff  
Pre-Hearing Officer

ATTEST:

  
K. David Waddell, Executive Secretary